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8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA

10 UNITED STATES OF AMERICA,) Case No. 2:10-cr-00440-ECR-LRL
11)
12 Plaintiff,)
13 vs.) ORDER
14 NELSON OSEMWENGIE,)
15 Defendant.)
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17 On August 16, 2011, Defendant filed a motion (#26) to enforce judgment.

18 The motion states that for Defendant to be credited for time served as a
19 concurrent sentence, the Bureau of Prisons requires that the judgment and
20 commitment order so state. The motion is somewhat difficult to interpret, but we
21 assume the thrust of it is that the judgment and commitment order did not include
22 a recommendation to the Bureau of Prisons that Defendant receive credit for time
23 served against the sentence we imposed. This is a recommendation to the Bureau
24 of Prisons which we frequently make at sentencing in such cases. Our
25 assumption generally is that the Bureau of Prisons fairly automatically grants
26 such credit, but based on the pleadings here, it may not do so where the sentence
27 imposed is made concurrent with other prior sentences that Defendant is serving.

28 An aspect of the case is that, if Defendant is receiving credit on other
federal sentences while awaiting sentencing here, he is unlikely to be entitled as


1 well to credit against the sentence we imposed.

2 The transcript of the sentencing proceeding does not indicate that the issue
3 of credit for time served was considered one way or another at the sentencing
4 hearing. We would be willing to entertain consideration of credit for time served
5 against the concurrent sentence we imposed if there is an appropriate vehicle for
6 this Court to consider this issue. The Government's opposition to the present
7 motion indicates that this issue may now be raised only by way of a motion, after
8 exhaustion, pursuant to 28 U.S.C. § 2241 in the District of Arizona where
9 Defendant is incarcerated.

10 IT IS ORDERED that Defendant's motion (#26) to enforce judgment is
11 **DENIED** without prejudice.

12 THEREFORE, IT IS ORDERED that Defendant shall have fourteen (14)
13 days within which to file an amended motion seeking relief, taking into
14 consideration the matters set forth above and any others that may be appropriate.
15 The Government will thereafter have fourteen (14) days to respond to the
16 amended motion. There shall be no reply.

17 Dated this 21st day of September 2011.

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19 EDWARD C. REED, JR.
20 United States District Judge
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